



Weil, Gotshal & Manges LLP

VIA HAND DELIVERY

201 Redwood Shores Parkway
Redwood Shores, CA 94065-1134
+1 650 802 3000 tel
+1 650 802 3100 fax

Edward R. Reines
+650 802-3022
edward.reines@weil.com

December 3, 2012

Honorable Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



Re: **SAP AG and SAP America, Inc. v. DataTern, Inc., No. 11-cv-2648-KBF**

Dear Judge Forrest:

I write on behalf of SAP AG and SAP America, Inc. ("SAP") regarding SAP's Motion to Enjoin DataTern's Assertion of Infringement of U.S. Patent Nos. 5,937,402 and 6,101,502 Based on the Use of SAP's BusinessObjects Products (the "Motion"). SAP is filing its Motion today.

SAP's Motion seeks an injunction preventing DataTern from threatening SAP customers of infringement of the Patents-in-Suit until the Federal Circuit issues a ruling in this case. This relief is necessary because DataTern is still attempting to coerce SAP customers to settle its Texas cases, even though DataTern itself has acknowledged repeatedly that this Court's ruling is binding on it and that SAP's customers will have no liability if the Federal Circuit confirms this Court's ruling.

Pursuant to Your Honor's Individual Practices in Civil Cases 1.A, and given the time sensitivity of SAP's Motion, SAP respectfully requests that the Court order expedited briefing on SAP's Motion. SAP requests the Court order DataTern, Inc. ("DataTern") to file its response no later than seven days after service of SAP's Motion, on Monday, December 10; and SAP to file its reply no later than four days after DataTern files its opposition, on Friday, December 14 (should DataTern serve SAP on Monday, December 10).

FROM: KATHERINE B. FORREST
UNITED STATES DISTRICT COURT

DataTern's actions necessitate expedited briefing. Despite DataTern's concession that it cannot prove infringement based on the use of SAP's BusinessObjects products in light of the Court's claim construction, DataTern is still attempting to coerce SAP customers to pay money to DataTern based on its infringement allegations in the Texas customer cases.

Following the denial of a renewed stay in the Texas customer cases, Customer Defendants are being intimidated into accepting below-cost-of-defense settlement offers. See Buccino Declaration In Support Of SAP's Motion ¶ 13. Indeed, DataTern has offered to settle with an SAP customer named as a defendant in one of the Texas cases for a five-figure settlement amount, even though that SAP customer is accused of infringement based solely on its use of BusinessObjects, *id.*, and such claims will

Hon. Judge Katherine B. Forrest
December 3, 2012
Page 2

Weil, Gotshal & Manges LLP

be extinguished in this Court based on this Court's claim construction ruling. Because DataTern's renewed pursuit of its Texas infringement allegations are immediately and irreparably injuring SAP's business, its customers, and its reputation, SAP respectfully requests that the Court order an expedited briefing schedule to resolve this issue as quickly as possible. The time sensitivity of the requested relief is explained in greater detail in SAP's Motion.

Respectfully submitted,

/s/ Edward R. Reines

Edward R. Reines

Counsel for Plaintiffs SAP AG and SAP America, Inc.

cc: Counsel for DataTern, Inc. (via electronic mail)

Order

DataTern to oppose
motion by 5 pm 12/13/12. No
Parties to argue motion reply.
on 12/14/12 at 2:30 p.m.

K. B. Forrest
HON. KATHERINE B. FORREST
UNITED STATES DISTRICT JUDGE

12/5/12